

Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 405: LICENSING OF HOSPITALS AND INSTITUTIONS

§1812-J. UNLICENSED ASSISTIVE PERSONS

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Certified nursing assistant" means an individual who has successfully completed an approved nursing assistant training program, holds a certificate of training and meets the eligibility requirements established by the State Board of Nursing for listing on the registry. [2009, c. 215, §2 (NEW).]

A-1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. [2011, c. 257, §3 (NEW).]

A-2. "Disqualifying offense" means a substantiation of abuse, neglect or exploitation or a criminal conviction identified in rules adopted by the department that prohibit employment as an unlicensed assistive person. [2015, c. 299, §11 (AMD).]

A-3. "Health care and direct access services settings" means settings in which individuals receive services that require direct access by a certified nursing assistant or unlicensed assistive person or other employee in providing direct care and related services. [2015, c. 299, §11 (AMD).]

A-4. "High severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for a substantiated finding after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident. [2011, c. 257, §3 (NEW).]

A-5. "Indicated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of low to moderate severity based on criteria established by the department by rule and that the person is not prohibited from employment as an unlicensed assistive person. [2011, c. 257, §3 (NEW).]

A-6. "Low to moderate severity" means the level, as established by the department by rule, of abuse, neglect or misappropriation of property of a client, patient or resident that forms the basis for an indicated finding after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident. [2011, c. 257, §3 (NEW).]

A-7. "Nondisqualifying criminal conviction" means a criminal conviction identified in rules adopted by the department that is included as a notation on the registry but does not prohibit employment as an unlicensed assistive person. [2011, c. 257, §3 (NEW).]

B. "Registry" means the Maine Registry of Certified Nursing Assistants and Direct Care Workers, which is a list of certified nursing assistants, with notations if applicable, and a list of direct care workers registered for training, education or compliance purposes, or unlicensed assistive persons with notations and is established under section 1812-G. [2015, c. 299, §12 (AMD).]

C. "State survey agency" means the agency specified in 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs and authorized to investigate and substantiate complaints against certified nursing assistants. [2011, c. 257, §3 (AMD).]

C-1. "Substantiated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that the abuse, neglect or misappropriation of property of a client, patient or resident was of high severity based on criteria established by the department by rule. [2011, c. 257, §3 (NEW).]

D. "Unlicensed assistive person" means an unlicensed individual who by virtue of employment has direct access to and provides direct care or direct contact assistance with activities of daily living or other services to individuals in homes, assisted living programs, residential care facilities, hospitals and other health care and direct access services settings. "Unlicensed assistive person" includes but is not limited to a direct support professional, residential care specialist, personal support specialist, mental health support specialist, mental health rehabilitation technician, behavior specialist, other qualified mental health professional, certified residential medication aide and registered medical assistant and other direct access workers or direct care workers as described in rules adopted by the department. "Unlicensed assistive person" does not include a certified nursing assistant employed in the capacity of a certified nursing assistant. [2015, c. 299, §13 (AMD).]

E. "Unsubstantiated finding" means an administrative determination made by the department, after investigation of a complaint against an unlicensed assistive person of abuse, neglect or misappropriation of property of a client, patient or resident, that no abuse, neglect or misappropriation of property of a client, patient or resident was found to support an indicated finding or a substantiated finding of abuse, neglect or misappropriation of property of a client, patient or resident. [2011, c. 257, §3 (NEW).]

F. "Direct care worker" means an individual who by virtue of employment generally provides to individuals direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to clients, patients or residents regardless of setting. "Direct care worker" does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant. [2015, c. 299, §14 (NEW).]

[2015, c. 299, §§11-14 (AMD).]

2. Complaint investigation. The department may investigate complaints and allegations of abuse, neglect, exploitation or misappropriation of property of a client, patient or resident in a home or health care setting against unlicensed assistive persons.

[2015, c. 299, §15 (AMD).]

2-A. Department decision after investigation of complaint. Based on criteria established by rule, the department, after investigation of a complaint of abuse, neglect or misappropriation of property of a client, patient or resident, shall:

- A. Make a substantiated finding; [2011, c. 257, §4 (NEW).]
- B. Make an indicated finding; or [2011, c. 257, §4 (NEW).]
- C. Make an unsubstantiated finding. [2011, c. 257, §4 (NEW).]

[2011, c. 257, §4 (NEW).]

3. Substantiated finding of complaint; registry listing. When a complaint against an unlicensed assistive person is substantiated by the department and the unlicensed assistive person is listed on the registry pursuant to subsection 4, the department's decision becomes final agency action as defined in Title 5, section 8002, subsection 4. The department shall notify the employer of the unlicensed assistive person that a substantiated finding of a complaint has been listed as a notation on the registry.

[2011, c. 257, §5 (AMD).]

3-A. Indicated finding of complaint; no registry listing. An indicated finding by the department of a complaint against an unlicensed assistive person does not prohibit employment and is not listed as a notation on the registry. The department's complaint investigation decision becomes final agency action as defined in Title 5, section 8002, subsection 4.

[2011, c. 257, §6 (NEW) .]

4. Registry listing. The department shall list an unlicensed assistive person employed as a direct care worker with a disqualifying offense notation and may register an unlicensed assistive person or direct care worker for training, education and compliance purposes. Disqualifying notations must include but are not limited to the following information:

A. Documentation of the department's investigation, including the nature of the allegation and the evidence that led the department to substantiate the allegation of abuse, neglect, exploitation or misappropriation of property; [2015, c. 299, §16 (AMD) .]

B. The date of the hearing, if the unlicensed assistive person chose to appeal the department finding that the complaint was substantiated; [2015, c. 299, §16 (AMD) .]

C. The unlicensed assistive person's statement to the department disputing the allegation, if the unlicensed assistive person chose to submit one; and [2015, c. 299, §16 (AMD) .]

D. Notations indicating the listed unlicensed assistive person is not in compliance with training or educational requirements. [2015, c. 299, §16 (NEW) .]

[2015, c. 299, §16 (AMD) .]

5. Right to hearing. The department shall notify the unlicensed assistive person of the right to request a hearing to contest the finding that the complaint under subsection 3 was substantiated.

[2009, c. 215, §2 (NEW) .]

6. Petition for removal of a substantiated finding of abuse, neglect or misappropriation of property. No sooner than 12 months after the date an abuse, neglect or misappropriation of property substantiated finding is placed on the registry, an unlicensed assistive person may petition the department to remove a notation from the registry if the substantiated complaint of abuse, neglect or misappropriation of property is a one-time occurrence and there is no pattern of abuse, neglect or misappropriation of property.

[2011, c. 257, §7 (AMD) .]

7. Prohibited employment based on disqualifying offenses. An employer who employs an unlicensed assistive person to provide direct access services shall conduct a comprehensive background check in accordance with state law and rules adopted by the department and is subject to the employment restrictions set out in section 1812-G and other applicable federal and state laws. The employer is subject to penalties for employing a disqualified or otherwise ineligible person in accordance with applicable federal or state laws.

A. [2015, c. 299, §17 (RP) .]

B. [2015, c. 299, §17 (RP) .]

C. [2011, c. 257, §8 (RP) .]

[2015, c. 494, Pt. D, §3 (AMD) .]

8. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 215, §2 (NEW) .]

SECTION HISTORY

2009, c. 215, §2 (NEW). 2011, c. 257, §§3-8 (AMD). 2015, c. 299, §§11-17 (AMD). 2015, c. 494, Pt. D, §3 (AMD).

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